

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 97A.5, the Board of Trustees of the Public Safety Peace Officers’ Retirement, Accident, and Disability System hereby gives Notice of Intended Action to amend Chapter 400, “Peace Officers’ Retirement, Accident, and Disability System—Governance and Administration,” Chapter 401, “Peace Officers’ Retirement, Accident, and Disability System—Administrative Procedures,” and Chapter 402, “Peace Officers’ Retirement, Accident, and Disability System—Eligibility, Benefits, and Payments,” and to rescind Chapter 404, “Peace Officers’ Retirement, Accident, and Disability System—Temporary Incapacity,” Iowa Administrative Code.

Iowa Code chapter 97A creates the Public Safety Peace Officers’ Retirement, Accident, and Disability System, which provides for retirement and disability benefits for peace officer members of the Iowa Department of Public Safety and which establishes within the Department of Public Safety a Board of Trustees with authority to administer the system, including establishing policies for the system through administrative rule making. The rules providing such policies are found in Chapters 400 through 404. Amendments to these rules are proposed herein to respond to legislative changes made during the 2010 session of the Iowa General Assembly. Major provisions included in these amendments are the following:

- Decisions regarding temporary incapacity of members of the system were made the province of the Commissioner of Public Safety, rather than of the Board of Trustees. Consequently, Chapter 404 regarding temporary incapacity is rescinded because the subject matter of the chapter is beyond the authority of the Board of Trustees.
- Provisions regarding the “escalator” for payments to retired members are clarified.
- Language regarding reimbursements for medical expenses of members is added, codifying practices established by the Board.
- Language is added regarding “purchase of eligible service credit” for members who previously served in agencies subject to the “411” retirement system, which covers many local law enforcement officers and firefighters, and for members who have completed active military service.

Any person who wishes to do so may submit comments in writing to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; or via E-mail to admrule@dps.state.ia.us. Comments should be submitted no later than 4:30 p.m. on June 8, 2010.

A public hearing to accept comments on these proposed amendments will be held at 9 a.m. on June 8, 2010, in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons who wish to be heard at the public hearing are asked to indicate their interest in being heard via E-mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Rules of the Public Safety Peace Officers’ Retirement, Accident, and Disability System are subject to the waiver provisions of rule 661—401.113(97A).

These amendments are intended to implement Iowa Code chapter 97A as amended by 2010 Iowa Acts, House File 2518 and Senate File 2318.

The following amendments are proposed.

ITEM 1. Amend rule 661—400.1(97A) as follows:

661—400.1(97A) Establishment of system. The Iowa department of public safety peace officers' retirement, accident, and disability system is established by Iowa Code chapter 97A. The administrative rules governing the system are found in this chapter and in 661—Chapters 401, 402, and 403, ~~and 404~~.

ITEM 2. Amend rule 661—400.2(97A), introductory paragraph, as follows:

661—400.2(97A) Definitions. The following definitions apply to 661—Chapters 400 through 404 403.

ITEM 3. Amend rule **661—400.2(97A)**, definition of “Board,” as follows:

“*Board*” means the board of trustees of the ~~peace officers' retirement~~ system.

ITEM 4. Rescind the definitions of “Temporary” and “Temporary incapacity” in rule **661—400.2(97A)**.

ITEM 5. Adopt the following new definitions of “Medical attention” and “System” in rule **661—400.2(97A)**:

“*Medical attention*” means services provided by licensed medical personnel including, but not limited to, office, hospital, in-home nursing care, nursing home care, long-term care and prescriptions for medicine or equipment.

“*System*” means the Iowa department of public safety peace officers' retirement, accident, and disability system.

ITEM 6. Amend rule 661—401.1(97A), introductory paragraph, as follows:

661—401.1(97A) Applications. Applications for benefits under Iowa Code chapter 97A shall be filed with the secretary on forms provided by the secretary. Applications for service retirement shall be made not more than 90 days nor less than 30 days in advance of the date of retirement. Applications for service retirement, ordinary disability or accidental disability, ~~or temporary incapacity~~ shall be reviewed by the secretary for completeness and then forwarded to the board of trustees.

ITEM 7. Amend subrule 401.1(1), introductory paragraph, as follows:

401.1(1) Manner of review for ordinary or accidental disability ~~or for temporary incapacity~~. The secretary shall compile the following materials, if available and applicable, for the board's review of a claim:

ITEM 8. Adopt the following new rule 661—401.3(97A):

661—401.3(97A) Applications for reimbursement for medical attention. Member beneficiaries may make application for reimbursement of the costs of medical attention as defined in rule 661—400.2(97A). This rule provides for the requirements of making application for reimbursement, the process for review and disposition of the application, and payment of approved applications.

401.3(1) Making application.

a. An application for reimbursement must be filed on a form provided by the secretary within 12 months of the member beneficiary's receiving treatment or incurring a cost for medical attention.

b. In the event there is a dispute with an insurance company regarding covered expenses, to remain eligible for reimbursement, the member beneficiary must file a request for extension, on a form provided by the secretary, if resolution of the dispute is expected to exceed 12 months.

c. Expenses shall only be reimbursed if the member beneficiary is retired as a result of an injury, illness or exposure occurring while in the performance of duty and is receiving a benefit as provided in Iowa Code section 97A.6(6).

d. Expenses shall be reimbursed only if the member beneficiary received medical attention for a condition with direct correlation to the disabling condition, the costs of which were not covered by insurance.

e. The system shall not reimburse for insurance premiums.

401.3(2) *Processing the application.*

a. Upon receipt of the application and supporting documentation, the secretary shall review the application for timeliness, completeness and validity. This subrule does not impose a responsibility on the secretary to discover documents or evidence not included on the application form.

b. The secretary shall refer the written application to the board for review at the next regularly scheduled meeting.

c. The member beneficiary does not need to be in attendance at the board meeting. In order to comply with Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), specific information pertaining to an application for reimbursement or the member beneficiary's disabling condition will not be discussed in open forum of the board meeting unless the member beneficiary is present and approves discussion in a public meeting.

d. The board may approve or deny all or part of a reimbursement application. The board may request additional information to support the application for reimbursement or to determine the correlation of the expense to the disabling condition. The member beneficiary shall provide the documents to the secretary within a reasonable time period. In no case shall the application remain valid for a period of more than 12 months.

e. If the board denies any part of a request for reimbursement, the member beneficiary may request judicial review in accordance with Iowa Code section 97A.6(13).

f. The system will make reimbursements only to the member beneficiary or to the surviving spouse in the event the member beneficiary is deceased.

401.3(3) *Other provisions.*

a. Reimbursements for claimed expenses shall be reduced by any amount already received by the member beneficiary from workers' compensation or from a third party as a result of subrogation proceedings entered into as a result of the disabling injury.

b. In the event the member beneficiary is restored to active service pursuant to Iowa Code section 97A.6(7) "b," consideration of reimbursement for expenses pursuant to Iowa Code section 97A.14 shall not extend beyond the date of restoration to active service.

c. If the member beneficiary receiving a disability retirement pursuant to Iowa Code section 97A.6(6) becomes employed in a public safety occupation pursuant to Iowa Code section 97A.6(7) "d," consideration of reimbursement for expenses pursuant to Iowa Code section 97A.14 shall not extend beyond the date of employment with the employing jurisdiction.

ITEM 9. Rescind subrule **402.201(3)**.

ITEM 10. Adopt the following new rules 661—402.212(97A) to 661—402.214(97A):

661—402.212(97A) Method of calculating annual adjustment for members who retire on or after July 1, 2010. For members retiring on or after July 1, 2010, there shall be an adjustment occurring on July 1 for which the following applicable amount shall be added to the member's monthly allowance:

402.212(1) On the first July 1 following the retirement of a member there shall be added to the monthly allowance the amount of \$15. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(2) applies.

402.212(2) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least five years, but less than ten years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$20. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(3) applies.

402.212(3) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 10 years, but less than 15 years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$25. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(4) applies.

402.212(4) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 15 years, but less than 20 years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$30. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(5) applies.

402.212(5) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 20 years prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$35.

661—402.213(97A) Method of calculating annual adjustment for members who retired prior to July 1, 2010. For members having retired before July 1, 2010, there shall be an adjustment occurring on July 1 for which the following applicable amount shall be added to the member's monthly allowance:

402.213(1) For members having retired on or after July 2, 2009, but before July 1, 2010, there shall be added to the monthly pension allowance the amount of \$15. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(2) applies.

402.213(2) For members having retired on or after July 2, 2008, but before July 2, 2009, no adjustment to the monthly allowance shall be made until the adjustment provided in subrule 402.212(2) applies.

402.213(3) For members having retired on or after July 2, 2007, but before July 2, 2008, no adjustment to the monthly allowance shall be made until the adjustment provided in subrule 402.212(5) applies.

402.213(4) For those members having retired on or before July 1, 2007, thus having received more than a total of \$35 added to the monthly allowance, there shall be no additional adjustments made to monthly allowances. Adjustments having resulted in more than \$35 added to the monthly allowance prior to July 1, 2010, shall not be considered overpayments, and the monthly allowances of members so affected shall not be reduced, nor shall members be required to repay any amount to the system.

NOTE: The following table summarizes the adjustments provided for in this rule.

Retirement Date	July 1 Monthly Allowance Adjustment	Adjustment Date
July 2, 2009 – June 30, 2010	\$15.00	July 1, 2010
July 2, 2008 – July 1, 2009	\$5.00	July 1, 2013
July 2, 2007 – July 1, 2008	\$5.00	July 1, 2028
Retired before July 2, 2007	\$0.00	Not applicable

661—402.214(97A) Determination of survivor's pension. For the purposes of determining a survivor's pension, the adjustments to monthly allowance provided in rules 661—402.212(97A) and 661—402.213(97A) shall be reduced in the same manner as is provided for the member's optional retirement benefit election made under rule 661—402.207(97A) or as provided in Iowa Code section 97A.6(12).

NOTE: Section 17 of 2010 Iowa Acts, House File 2518, reads as follows:

Sec. 17. PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—ADJUSTMENT OF PENSIONS PAYABLE. It is the intent of the general assembly that the applicable amount for each adjustment occurring on July 1 as provided in section 97A.6, subsection 14, paragraph "a", subparagraph (2), subparagraph division (a), shall be the exact dollar amount listed in each subparagraph subdivision of subparagraph division (a) for each July 1 in which that particular subparagraph subdivision applies and shall not be increased above the amount listed in that subparagraph subdivision for each year that the subparagraph subdivision applies. However, the applicable amount for each adjustment occurring on or after July 1, 2010, as provided by this section, shall not be less than the applicable amount for the adjustment for the previous July 1.

ITEM 11. Rescind rules 661—402.300(97A) to 661—402.306(97A) and adopt the following new rules in lieu thereof:

661—402.300(97A) Purchase of eligible service credit. Effective July 1, 2010, and no later than July 1, 2011, an active member may make application to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service.

661—402.301(97A) Determination of eligible service.

402.301(1) Eligible qualified service. “Eligible qualified service” means service as a member of a city fire retirement system or police retirement system operating under Iowa Code chapter 411 prior to January 1, 1992, for which service has not previously been credited. Eligible qualified service does not include service if the receipt of credit for such service would result in the member’s receiving a retirement benefit under more than one retirement plan for the same period of service.

402.301(2) Permissive service credit.

a. Permissive service credit is credit that will be recognized by the system for purposes of calculating a member’s benefit, for which the member did not previously receive service credit in the system, and for which the member voluntarily contributes to the system the amount required by the system, not in excess of the amount necessary to fund the benefit attributable to such service.

b. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

c. An active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service as determined by the system, pursuant to Internal Revenue Code Section 415(n).

661—402.302(97A) Determination of cost to member.

402.302(1) Determination of service credit. A member may determine the amount of permissive service credit, which shall be documented on a form provided by the secretary. Such documentation shall include the notarized certification by an official of the city or agency that employed the member and shall include periods of service and member retirement contributions to the former system during the indicated time of service. In the event member contribution information is not available from the employing city or agency, documentation may be provided in another form acceptable to the board. Acceptable documentation may include, but is not limited to, IRS form W-2, Social Security earnings statements, pay stubs or Iowa tax form 1040 or 1040A.

402.302(2) Actuarial cost quote of permissive service credit.

a. A member may submit certification of service credit to the secretary to obtain a cost quote of permissive service.

b. The secretary shall review and verify the submitted certification of service credit to ensure that the requirements of subrule 402.302(1) have been met.

c. When service credit has been verified, the secretary shall submit a request to the actuary contracted by the system to determine the cost to purchase permissive service credit.

d. A member may request cost quotes to purchase permissive service credit for a maximum of two time periods at no cost to the member.

e. If a member requests a third or subsequent cost quote, the member shall be required to pay for the cost of the quote.

f. A second or subsequent cost quote for the same period of permissive service credit shall replace all previous cost quotes for that time period.

g. If the requirements of subrule 402.302(1) cannot be verified, the request for a cost quote shall not be submitted to the actuary but rather shall be referred to the board for review at the next regularly scheduled meeting.

661—402.303(97A) Application process.

402.303(1) *Actuarial cost quote of permissive service credit.* When made available to the secretary by the actuary, the cost quote shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote of permissive service credit shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of permissive service credit.

402.303(2) *Submission of application to purchase permissive service credit.* The member may submit to the secretary an application to purchase years of permissive service credit in an amount no greater than the maximum certified years of permissive service credit at a rate quoted by the actuary less an amount equal to the member's contributions pursuant to Iowa Code chapter 411 for the period of eligible qualified service together with interest at a rate determined by the board. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase permissive service credit. Contributions shall be made by the member within the six-month period the quote is valid.

402.303(3) *Acceptance of application to purchase permissive service credit.* If the application is accepted, the secretary shall deposit the full payment into the system's account and shall adjust the member's years of service and contributions to reflect the purchase of service. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service or contributions.

402.303(4) *Rejection of application to purchase permissive service credit.* If the application is rejected, the secretary shall refer the rejected application to the board for review at the next regularly scheduled meeting.

661—402.304(97A) Service adjustment irrevocable. An adjustment of a member's years of service which has been completed pursuant to subrule 402.303(3) is irrevocable. However, this rule shall not be interpreted to limit the system's ability to refund service credit purchase amounts when required in order to meet the provisions of the Internal Revenue Code.

661—402.305(97A) Board review.

402.305(1) *Review of rejection of certification of service credit.* The board shall review a rejected certification of service credit. If the board overrules the rejection, the secretary shall submit the certification of service credit to the actuary to determine the member's cost to purchase permissive service credit. If the board sustains the rejection, the member may appeal the action pursuant to 661—subrule 401.2(2).

402.305(2) *Review of rejection of application to purchase service credit.* The board shall review any application to purchase service credit which has been rejected. If the board overrules the action, the secretary shall process the application pursuant to subrule 402.303(3). If the board sustains the rejection, the secretary shall return the payment to the member. The member may appeal the action pursuant to 661—subrule 401.2(2).

661—402.306(97A) Other provisions.

402.306(1) Within 60 days following the entry of an adjustment to a member's years of service based on a purchase of permissive service credit, the secretary shall report the purchase to the system under which the service credit was originally earned.

NOTE: This notification is intended to meet the requirement that a member not receive a retirement benefit under more than one retirement plan for the same period of service.

402.306(2) The average final compensation of the member shall not be affected by the purchase of permissive service credit.

ITEM 12. Adopt the following new rule 661—402.307(97A):

661—402.307(97A) Purchase of service credit for military service.

402.307(1) Eligibility. Effective July 1, 2010, an active member of the system who has been a member of the retirement system five or more years may purchase service credit for military service under this chapter.

NOTE: Determination of length of active membership will be made pursuant to Iowa Code section 97A.3.

402.307(2) Service eligible for purchase. An eligible member may elect to purchase up to five years of service for military service that is not already recognized by the system or required to be recognized by the system under Internal Revenue Code Section 414(u) or the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

a. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

b. A member may elect to purchase service credit for all or part of the member's eligible service up to the five-year limitation and limitations of Internal Revenue Code Section 415(n).

c. For purposes of this rule, "military service" means active duty service in any of the following:

(1) The United States Army, Navy, Marine Corps, Air Force or Coast Guard;

(2) The United States Army Reserves, Naval Reserves, Marine Corps Reserves, Air Force Reserves or Coast Guard Reserves;

(3) The Army National Guard or Air National Guard;

(4) The Commissioned Corps of the Public Health Service; or

(5) Any other category of persons designated by the President in a time of war or emergency.

402.307(3) Application. A member seeking to purchase service credit under this rule shall file a written application with the system requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the secretary. The member shall include with the application:

a. Periods of military service for which credit is requested.

b. Proof of applicable military service. Records that may be acceptable for this purpose include the member's DD Form 214, discharge papers or other records as determined by the system.

c. Any other documentation reasonably requested by the system.

402.307(4) Determination of cost to member. Upon receipt of the written application and supporting documentation, the secretary shall review and verify the submitted documents. The secretary shall submit the application and pertinent member information to the actuary contracted by the system to determine the cost to purchase the military service. The cost of actuarial determinations shall be borne by the member, payable upon receipt of the cost quote.

402.307(5) Application process.

a. *Actuarial cost quote of military service credit.* When made available to the secretary by the actuary, the cost quote shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote for purchase of credit for military service shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of military service.

b. *Submission of application to purchase military service credit.* The member may submit to the secretary an application to purchase years of military credit in a cumulative amount no greater than five years. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase military service credit.

c. *Acceptance of application to purchase military service credit.* If the application is accepted, the secretary shall deposit the full payment in the system's account and shall adjust the member's years of service and contributions to reflect the purchase of credit for military service. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service or contributions.

402.307(6) Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the system no later than 60 days following the date of the receipt of the payment of the purchase cost by the system and prior to the date of the commencement of benefits to the member under Iowa Code section 97A.6.

402.307(7) Refund when required by Internal Revenue Code. This rule shall not be construed to limit the system's ability to refund service credit purchase amounts when required in order to meet the provisions of the Internal Revenue Code.

402.307(8) Rejection of application to purchase military service credit. If the application is rejected, the secretary shall refer the rejected application to the board for review at the next regularly scheduled meeting.

402.307(9) Board review. The board shall review any rejected application for purchase of military service credit. If the board overrules the action, the secretary shall process the application. If the board sustains the rejection, the secretary shall return the payment to the member. The member may appeal the action pursuant to 661—subrule 401.2(2).

402.307(10) Average final compensation. The average final compensation of the member shall not be affected by the purchase of credit for military service.

ITEM 13. Amend **661—Chapter 402**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 97A as amended by 2010 Iowa Acts, House File 2518 and Senate File 2318.

ITEM 14. Rescind and reserve **661—Chapter 404**.